APPEAL NO. 010423

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 6, 2001. The issue before the hearing officer was:

> Did the Claimant [respondent] sustain a compensable injury to her right shoulder in addition to the injury to her neck and back on _____?

The hearing officer resolved that issue in the affirmative by finding that cervical surgery in 1997 "resulted in Claimant sustaining an injury characterized by pain in thumb and index finger of her right hand and pain up her right arm through her shoulder to her neck."

The appellant (self-insured) appealed, pointing to evidence which would lead to a contrary conclusion, citing contradictory medical evidence, and arguing that the hearing officer actually found that the claimant "DID NOT injure her shoulder on _____." The claimant responds, urging affirmance.

DECISION

Affirmed.

The claimant was a cafeteria worker and on _____, slipped and fell on her right side, hitting her head on the handle of a stove. The self-insured accepted liability for a head and cervical spine injury. The claimant testified that she returned to work in August 1995 and that her right shoulder began to hurt. The claimant was diagnosed as having a herniated cervical disc at C4-5 and on March 4, 1997, had a decompressive laminectomy at "C4-5-6 and the upper part of 7" by Dr. B. The claimant testified that on regaining consciousness from that surgery, she had severe pain, numbness, and tingling in her right hand. The claimant said that the doctors believed that her shoulder complaints were related to her cervical spine injury and surgery. The claimant had a second cervical spine surgery (discectomy and fusion) at C4-5, C5-6, and C6-7 with instrumentation on March 24, 1998, by Dr. C.

The claimant was seen by a number of doctors and there is conflicting medical evidence. Dr. M, the claimant's treating doctor, is of the opinion in April/May 1997 reports that the claimant was placed in an awkward position under anesthesia during the 1997 surgery which resulted in a "rotator cuff injury or frozen shoulder." Dr. M referred the claimant to Dr. D, who in a July 1997 report indicated that the rotator cuff tear could have preexisted her surgery. In a November 4, 1999, report, Dr. D stated that he believed the claimant injured her right shoulder in the fall. Dr. O, the self-insured's independent medical examination doctor, in a report of December 9, 1997, said that the claimant had "C6 radiculopathy . . . with sensory deficit" and that he thought the claimant's "current physical complaints are a direct result of her on the job injury because of the herniation . . . [and] what is left now is secondary to damage after the surgery." Dr. T, a record review doctor,

referred to the medical reports and concluded in a report dated December 8, 2000, that none of the claimant's complaints "are related to the injury of _____."

With the medical evidence in conflict, even as to the exact nature of the injury, the hearing officer found that the claimant had not injured her shoulder in the fall but that the claimant's complaints were due to the 1997 surgery, apparently adopting Dr. M's theory and Dr. O's comment. A condition caused by medical treatment for a compensable injury may become part of the compensable injury. Maryland Casualty Company v. Sosa, 425 S.W.2d 871 (Tex. Civ. App.-San Antonio 1968, writ ref'd n.r.e. *per curiam* 432 S.W.2d 515). This doctrine applies to the aggravation of a preexisting condition by medical treatment for the compensable injury. Texas Employers' Indemnity Company v. Etie, 754 S.W.2d 806 (Tex. App.-Houston [1st Dist.] 1988, no writ).

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). We find the hearing officer's decision sufficiently supported by the evidence.

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Philip F. O'Neill
Appeals Judge